

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

UNITED STATES

vs.

Criminal No. 04-30032-MAP

FRANK KEOUGH, et al.,  
Defendants

**DEFENDANT'S MOTION TO DISMISS  
COUNT I OF THE SECOND SUPERSEDING INDICTMENT  
(DUPLICITY)**

Now comes the Defendant, Francis Keough, in the above-captioned matter, and moves this Honorable Court, pursuant to Rule 12(b) of the Federal Rules of Criminal Procedure, to dismiss Count I from the Second Superseding Indictment. As grounds therefor, the Defendant states:

1. Count I of the Second Superseding Indictment charges the Defendants, Francis Keough, Angel Guzman, and Michael Hallahan, with Conspiracy to Commit Mail Fraud and Theft of Honest Services in violation of 18 U.S.C. § 371, 18 U.S.C. § 1341 and 18 U.S.C. § 1346;
2. Examination of Count I of the Second Superseding Indictment reveals that said Count impermissibly charges multiple conspiracies in single count, and hence is "duplicitous";
3. As a matter of law, the insufficiency of this Count of the Second Superseding Indictment cannot be cured by a bill of particulars;
4. The only remedy to correct the fatally duplicitous nature of Count I of the Second Superseding Indictment is dismissal of Count I.

In further support thereof, the Defendant relies on his Memorandum of Law in Support of Defendant's Motion to Dismiss Count I of the Second Superseding Indictment (Duplicity), filed

herewith.

Wherefore, by all of the above, the Defendant's Motion to Dismiss Count I of the Second Superseding Indictment must be allowed.

THE DEFENDANT,  
FRANK KEOUGH

By: /s/ Daniel D. Kelly  
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**CERTIFICATE OF SERVICE**

I, Dan Kelly, Esq., hereby certify that I caused the foregoing document to be served upon the United States Attorney's Office at 1500 Main Street, Springfield, MA, by electronic service this 27<sup>th</sup> day of September, 2006.

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